

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**National Immigrant Justice Center**  
*Plaintiff,*

**v.**

**United States Department of Justice  
(DOJ);**  
*Defendant.*

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**Case No. 1:12-cv-4691**

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**STATEMENT OF THE CASE**

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, to order the Department of Justice (DOJ) to produce certain documents related to eleven immigration decisions issued by the Attorney General. To date, Plaintiff has not received any response to its December 3, 2010 FOIA Request seeking copies of communications between the Attorney General or any individual employed in the Office of the Attorney General, and employees of: the Office for Immigration Litigation; the Office of the Solicitor General; the Department of Homeland Security (DHS), including attorneys representing DHS in removal proceedings; the Office of Counsel to the President; or any individual working for the President or the Vice-President of the United States.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).
2. Venue lies in the Northern District of Illinois pursuant to 5 U.S.C. § 552(a)(4)(B), in that the defendant resides within that district.

### **PARTIES**

3. Plaintiff National Immigrant Justice Center (NIJC) is a non-profit entity providing immigration assistance, deportation defense and asylum representation for low-income immigrants. It is crucial to NIJC's mandate to obtain information regarding government immigration decisions to ensure the protection of immigrants' civil rights and liberties where there are no formal mechanisms to ensure such oversight.
4. Defendant Department of Justice (DOJ) is an agency of the United States, as that term is defined at 5 U.S.C. § 551. DOJ has possession of and control over the agency records that Plaintiff seeks.

### **FACTUAL ALLEGATIONS**

5. On December 3, 2010, NIJC filed a FOIA Request with defendant DOJ seeking various documents in DOJ's possession:

We request any and all documents in the custody or control of the Department of Justice ("DOJ"), related to the following:

1. Any records of communications, including memoranda, e-mails, notes of or regarding telephone calls, or similar documents, between the Attorney General or any individual employed in the Office of the Attorney General, and
  - (a) Employees of the Office for Immigration Litigation;
  - (b) Employees of the Office of the Solicitor General;
  - (c) Employees of the Department of Homeland Security (DHS), including attorneys representing DHS in removal proceedings;
  - (d) Employees of the Office of Counsel to the President; or

(e) Any individual identified as working for the President or the Vice-President of the United States,  
regarding the following decisions issued by the Attorney General:

*Matter of Compean*, 24 I&N Dec. 710 (A.G. 2009)  
*Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)  
*Matter of R-A-*, 24 I&N Dec. 629 (A.G. 2008)  
*Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008)  
*Matter of J-S-*, 24 I&N Dec. 520 (A.G. 2008)  
*Matter of A-H-*, 23 I&N Dec. 774 (A.G. 2005)  
*Matter of Luviano-Rodriguez*, 23 I&N Dec. 718 (A.G. 2005)  
*Matter of Marroquin-Garcia*, 23 I&N Dec. 705 (A.G. 2005)  
*Matter of C-Y-Z-*, 23 I&N Dec. 693 (A.G. 2004)  
*Matter of Jean*, 23 I&N 373 (A.G. 2002)  
*Matter of Y-L, A-G- & R-S-R-*, 23 I&N Dec. 270 (A.G. 2002).

6. Defendant DOJ received NIJC's December 3, 2010 FOIA Request on December 22, 2010.
7. Defendant DOJ responded to NIJC's December 3, 2010 FOIA Request on January 21, 2011.
8. In its January 21, 2011 response, defendant DOJ indicated that it would be unable to respond as required by statute. The DOJ letter indicated that it would be necessary to collect records from another, unnamed office. The DOJ letter also invited NIJC to narrow the scope of its records Request.
9. To date, defendant DOJ has not sought any additional extensions of time within which to respond to NIJC's December 3, 2010 Request.
10. To date, defendant DOJ has not provided any of the documents sought by NIJC in its December 3, 2010 FOIA Request.
11. More than thirty working days have now elapsed since NIJC's FOIA Request was received by DOJ, without any substantive response.
12. No exceptional circumstances prevent DOJ from responding to this Request.

13. On March 23, 2011, NIJC filed an administrative appeal with the Office of Information and Privacy (OIP), a component of the Department of Justice, challenging DOJ's denial of its Request for documents under the FOIA.
14. OIP received NIJC's March 23, 2011 administrative appeal on April 5, 2011.
15. OIP responded to NIJC's March 23, 2011 administrative appeal on April 14, 2011.
16. OIP assigned NIJC's administrative appeal the reference number AP-2011-01562.
17. More than twenty working days have now elapsed since NIJC's administrative appeal was received by OIP, without any substantive response.

#### **COUNT 1**

18. Plaintiff incorporates and alleges paragraphs 1-17 above.
19. By statute, defendant DOJ had twenty working days from date of receipt to respond to NIJC's December 3, 2010 FOIA Request.
20. By statute, OIP had twenty working days from the date of receipt to respond to NIJC's March 23, 2011 administrative appeal.
21. The documents sought in NIJC's FOIA Request are agency records subject to FOIA.
22. Upon information and belief, Defendant has records responsive to the FOIA Request in its possession.
23. Plaintiff has a statutory right to the records it seeks, and there is no legal basis for Defendant's refusal to produce them.
24. Defendant's failure to execute a sufficient search and to produce responsive records violates the Freedom of Information Act, 5 U.S.C. § 552(a).

25. Alternately, the agency's failure to produce the Requested documents is arbitrary and capricious.
26. Defendant failed to respond to Plaintiff's Request, or to its appeal, within the statutory time period. Thus, Plaintiff is deemed to have exhausted its administrative remedies.
27. Plaintiff's prayer for relief is within the six year statute of limitations for commencing an action against the United States Government specified in Title 28 U.S.C. § 2401.

**RELIEF REQUESTED**

WHEREFORE, NIJC prays that this Court:

- a) Enter judgment in favor of NIJC and against defendant DOJ;
- b) Declare that DOJ unlawfully failed to respond to NIJC's FOIA Request;
- c) Enjoin defendant DOJ's withholding of responsive records to FOIA Request and order production of responsive documents and information;
- d) Find that DOJ's failure to respond to NIJC's FOIA Request is arbitrary and capricious;
- e) Award NIJC its costs and reasonable attorneys' fees in this actions; and
- f) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

\_\_\_\_\_/s/ Brian J. Murray\_\_\_\_\_

Brian J. Murray  
JONES DAY  
77 West Wacker Drive  
Chicago, IL 60601  
Telephone (312) 782-3939  
Facsimilie (312) 782-8585

Chuck Roth  
NATIONAL IMMIGRANT JUSTICE CENTER  
208 South LaSalle Street, Suite 1818  
Chicago, Illinois 60604  
Telephone: (312) 660-1308/1613/1628  
Facsimile: (312) 660-1505  
*Attorneys for National Immigrant Justice Center*

Dated: June 15, 2012